

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISMAIL FERDOUS,

Plaintiff,

- against -

HELVETAS USA INC. and
SIMSLAFIM PRODUCTION ZURICH

Defendants.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Ismail Ferdous (“Ferdous” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Helvetas USA Inc. (“Helvetas”) and Simslafim Production Zurich (“Sims”) (and together “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendants unauthorized reproduction and public display of a thirty-one copyrighted photographs of the Rana Plaza Collapse in Bangladesh, India owned and registered by Ferdous, a Bangladesh based documentary photographer. Accordingly, Ferdous seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Ferdous is an award winning professional documentary photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at Plot-567, Holding-917/1, Block-C Khilgaon, Dhaka-1219, Bangladesh, India. Ferdous has won numerous awards and grants including first place in the ForeStClim photo contest in Germany, first place in in the 2012 Commonwealth Photographic Awards in the United Kingdom, 2nd prize in the WHO-World AIDS Day in 2011, first place in the Professional General News category in the Prix de La Photographie, Award of Excellence for the Alexia Foundation Grant 2012 and others.

6. Upon information and belief, Helvetas is a corporation with a place of business at 231 West 29th Street #1204, New York, New York 10001. At all times material hereto, Helvetas has produced and created a documentary called Helvetas Slow Fashion Container (the “Film”).

7. Upon information and belief, Sims is a film production company owned by Sandra Gomez and Silvana Ceschi. At all times material hereto, Sims has produced and created a documentary called Helvetas Slow Fashion Container (the “Film”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

8. On or about April 24, 2013, an eight story commercial building named Rana Plaza collapsed as a result of a structural failure in Dhaka, Bangladesh. There were approximately 1,130 deaths and 2,500 injured. The building contained clothing factories, a bank,

apartments, and shops. It is the deadliest garment factory accident in history and the deadliest accidental structural failure in history.

9. From on or about April 24, 2013 through May 13, 2013 Ferdous photographed the aftermath of the accident. Ferdous took photographs of the survivors in the rubble and the horrific scene of injured children and families (the “Photographs”). A true and correct copy of the Photographs are attached hereto as Exhibit A.

10. Ferdous then licensed the Photographs to The New York Times. On April 15, 2014, The New York Times ran an article that featured the Photographs on its web edition entitled, *The Deadly Cost of Fashion*. See (<http://www.nytimes.com/2014/04/15/opinion/the-deadly-cost-of-fashion.html>). Ferdous’s name was featured in a gutter credit identifying him as the photographer of the Photographs.

11. Ferdous is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyrights thereto.

12. The Photographs were registered with Copyright Office and was given Copyright Registration Number VA 2-006-112.

B. Defendants Infringing Activities

13. Upon information and belief, in April 2016 Defendants created and produced a documentary entitled *Helvetas Slow Fashion Container*. See (<https://vimeo.com/163974694>). The video prominently featured the Photographs. A true and correct copy of the video with the photographs is attached hereto as Exhibit B.

14. Defendants did not license the Photographs from Plaintiff for its Film, nor did Defendants have Plaintiff’s permission or consent to publish the Photographs on its Film.

15. Upon information and belief, Defendants removed Ferdous's gutter credit and did not attribute the Photographs to anyone.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HELVETAS AND SIMS)
(17 U.S.C. §§ 106, 501)

16. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-15 above.

17. Defendants infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Film. Defendants are not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

18. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

19. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

20. As a direct and proximate cause of the infringement by the Defendants of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendants profits pursuant to 17 U.S.C. § 504(b) for the infringement.

21. Defendants conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
HELVETAS AND SIMS
(17 U.S.C. § 1202)**

22. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-21 above.

23. When the Photographs were published in an article in The New York Times, the article contained copyright management information protected under 17 U.S.C. § 1202(b).

24. Upon information and belief, in its article on the Website, Defendants intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.

25. The conduct of Defendants violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Defendants falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Defendants intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photographs. Defendants also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photographs.

28. As a result of the wrongful conduct of Defendants as alleged herein, Plaintiff is entitled to recover from Defendants the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Defendants because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

29. Alternatively, Plaintiff may elect to recover from Defendants statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendants be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photographs.
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendants pursuant to 17 U.S.C. § 1203(c);
5. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203 (b);

7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 21, 2016

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